

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1356

Introduced by Senator De León

February 24, 2012

An act to add and repeal Sections 17053.86 and 23686 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1356, as amended, De León. Income taxes: credits: contributions to education funds.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill, under both laws, for taxable years beginning on or after January 1, 2013, and before January 1, 2016, would allow a credit equal to a certain percentage of a contribution to the Higher Education Investment Tax Credit Program Special Fund, established by this bill, for the General Fund and specified education purposes, as provided. This bill would specify that the aggregate amount of credit that may be allocated under both laws shall not exceed \$100,000,000 for each calendar year, and would require the ~~Treasurer~~ *California Educational Facilities Authority* to perform certain duties with regard to allocating and certifying the tax credits allowed under these provisions.

This bill would become operative only if SB 1466 of the 2011–12 Regular Session is enacted and takes effect on or before January 1, 2013.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17053.86 is added to the Revenue and
2 Taxation Code, to read:
3 17053.86. (a) (1) For each taxable year beginning on or after
4 January 1, 2013, and before January 1, 2016, there shall be allowed
5 a credit against the “net tax,” as defined in Section 17039, an
6 amount equal to the following:
7 (A) For taxable years *beginning* on and after January 1, 2013,
8 and before January 1, 2014, 60 percent of the amount contributed
9 by the taxpayer during the 2013 taxable year to the Higher
10 Education Investment Tax Credit Program Special Fund, as
11 allocated and certified by the ~~Treasurer~~ *California Educational*
12 *Facilities Authority*.
13 (B) For taxable years *beginning* on and after January 1, 2014,
14 and before January 1, 2015, 55 percent of the amount contributed
15 by the taxpayer during the 2014 taxable year to the Higher
16 Education Investment Tax Credit Program Special Fund, as
17 allocated and certified by the ~~Treasurer~~ *California Educational*
18 *Facilities Authority*.
19 (C) For taxable years *beginning* on and after January 1, 2015,
20 and before January 1, 2016, 50 percent of the amount contributed
21 by the taxpayer during the 2015 taxable year to the Higher
22 Education Investment Tax Credit Program Special Fund, as
23 allocated and certified by the ~~Treasurer~~ *California Educational*
24 *Facilities Authority*.
25 (2) Contributions shall be made only in cash.
26 (b) (1) The aggregate amount of credit that may be allocated
27 and certified pursuant to this section and Section 23686 shall not
28 exceed one hundred million dollars (\$100,000,000) for the 2013
29 calendar year and one hundred million dollars (\$100,000,000) for
30 each calendar year thereafter.
31 (2) (A) For purposes of this section, the ~~Treasurer~~ *California*
32 *Educational Facilities Authority* shall do all of the following:
33 (i) On or after January 1, 2013, and before January 1, 2016,
34 allocate and certify tax credits to taxpayers under this section.

(ii) Establish a procedure for taxpayers to contribute to the Higher Education Investment Tax Credit Program Special Fund and to obtain from the ~~Treasurer~~ *California Educational Facilities Authority* a certification for the credit allowed by this section.

(iii) On or after January 1, 2013, and before January 1, 2015, notify the taxpayer within seven days of receipt of a contribution of the contribution amount that is eligible for a credit. If the allocation and certification would be limited or denied because the one hundred million dollar (\$100,000,000) cap set forth in paragraph (1) of subdivision (b) has been reached, the ~~Treasurer~~ *California Educational Facilities Authority* shall offer the taxpayer a choice between either the return of the contribution or the receipt of the certification for the next taxable year.

(iv) On or after January 1, 2015, and before January 1, 2016, notify the taxpayer within seven days of receipt of a contribution, the contribution amount that is eligible for a credit. If the allocation and certification would be limited or denied because the one hundred million dollar (\$100,000,000) cap set forth in paragraph (1) of subdivision (b) has been reached, the ~~Treasurer~~ *California Educational Facilities Authority* shall offer the taxpayer the option of a return of all of the contribution or the portion of the contribution that would be limited, as applicable.

(v) Provide to the Franchise Tax Board a copy of each credit certificate issued for the calendar year by March 1 of the calendar year immediately following the year in which those certificates are issued.

~~(3) (A) The determinations of the Franchise Tax Board with respect to the disallowance of a credit, the date a return is received, and whether a return has been timely filed for purposes of this subdivision shall not be reviewed in any administrative or judicial proceeding.~~

~~(B) Any disallowance of a credit claimed due to a determination under this subdivision shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.~~

(B) (i) The California Educational Facilities Authority shall adopt any regulations necessary to implement this paragraph.

(ii) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to

1 *any regulation adopted by the California Educational Facilities*
2 *Authority pursuant to clause (i).*

3 (c) (1) In the case where the credit allowed by this section
4 exceeds the “net tax,” the excess may be carried over to reduce
5 the “net tax” in the following year, and succeeding five years if
6 necessary, until the credit is exhausted.

7 (2) A deduction shall not be allowed under this part for amounts
8 taken into account under this section in calculating the credit
9 allowed by this section.

10 (d) (1) The Higher Education Investment Tax Credit Program
11 Special Fund is hereby created as a special fund in the State
12 Treasury. All revenue in this special fund shall be allocated as
13 follows:

14 (A) First, to the General Fund in an amount equal to the amount
15 of certified credits allowed pursuant to this section and Section
16 23686 for the taxable year.

17 (B) Second, revenues shall be allocated, upon appropriation by
18 the Legislature:

19 (i) To the Franchise Tax Board, the ~~Treasurer~~ *California*
20 *Educational Facilities Authority*, the Controller, and the Student
21 Aid Commission for reimbursement of all administrative costs
22 incurred by these agencies in connection with their duties under
23 this section, Section 23686, and Section 69432.75 of the Education
24 Code.

25 (ii) To the Student Aid Commission for purposes of awarding
26 Cal Grants to students pursuant to Section 69432.75 of the
27 Education Code.

28 (2) The tax credit allowed by subdivision (a) of this section and
29 subdivision (a) of Section 23686 for donations to the Higher
30 Education Investment Tax Credit Program Special Fund shall be
31 known as the Higher Education Investment Tax Credit Program.

32 ~~(e) (1) The Franchise Tax Board may prescribe rules, guidelines,~~
33 ~~or procedures necessary or appropriate to carry out the purposes~~
34 ~~of this section, including any guidelines regarding the limitation~~
35 ~~on total credits allowable under this section and Section 23686.~~

36 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
37 ~~Division 3 of Title 2 of the Government Code does not apply to~~
38 ~~any standard, criterion, procedure, determination, rule, notice, or~~
39 ~~guideline established or issued by the Franchise Tax Board~~
40 ~~pursuant to this section.~~

1 ~~(f)~~

2 ~~(e)~~ This section shall remain in effect only until December 1,
3 2016, and as of that date is repealed.

4 SEC. 2. Section 23686 is added to the Revenue and Taxation
5 Code, to read:

6 23686. (a) (1) For each taxable year beginning on or after
7 January 1, 2013, and before January 1, 2016, there shall be allowed
8 a credit against the “tax,” as defined in Section 23036, an amount
9 equal to the following:

10 (A) For taxable years *beginning* on and after January 1, 2013,
11 and before January 1, 2014, 60 percent of the amount contributed
12 by the taxpayer during the 2013 taxable year to the Higher
13 Education Investment Tax Credit Program Special Fund, as
14 allocated and certified by the ~~Treasurer~~ *California Educational*
15 *Facilities Authority*.

16 (B) For taxable years *beginning* on and after January 1, 2014,
17 and before January 1, 2015, 55 percent of the amount contributed
18 by the taxpayer during the 2014 taxable year to the Higher
19 Education Investment Tax Credit Program Special Fund, as
20 allocated and certified by the ~~Treasurer~~ *California Educational*
21 *Facilities Authority*.

22 (C) For taxable years *beginning* on and after January 1, 2015,
23 and before January 1, 2016, 50 percent of the amount contributed
24 by the taxpayer during the 2015 taxable year to the Higher
25 Education Investment Tax Credit Program Special Fund, as
26 allocated and certified by the ~~Treasurer~~ *California Educational*
27 *Facilities Authority*.

28 (2) Contributions shall be made only in cash.

29 (b) (1) The aggregate amount of credit that may be allocated
30 and certified pursuant to this section and Section 17053.86 shall
31 not exceed one hundred million dollars (\$100,000,000) for the
32 2013 calendar year and one hundred million dollars (\$100,000,000)
33 for each calendar year thereafter.

34 (2) (A) For purposes of this section, the ~~Treasurer~~ *California*
35 *Educational Facilities Authority* shall do all of the following:

36 (i) On or after January 1, 2013, and before January 1, 2016,
37 allocate and certify tax credits to taxpayers under this section.

38 (ii) Establish a procedure for taxpayers to contribute to the
39 Higher Education Investment Tax Credit Program Special Fund

1 and to obtain from the ~~Treasurer~~ *California Educational Facilities*
2 *Authority* a certification for the credit allowed by this section.

3 (iii) On or after January 1, 2013, and before January 1, 2015,
4 notify the taxpayer within seven days of receipt of a contribution
5 of the contribution amount that is eligible for a credit. If the
6 allocation and certification would be limited or denied because
7 the one hundred million dollar (\$100,000,000) cap set forth in
8 paragraph (1) of subdivision (b) has been reached, the ~~Treasurer~~
9 *California Educational Facilities Authority* shall offer the taxpayer
10 a choice between either the return of the contribution or the receipt
11 of the certification for the next taxable year.

12 (iv) On or after January 1, 2015, and before January 1, 2016,
13 notify the taxpayer within seven days of receipt of a contribution,
14 the contribution amount that is eligible for a credit. If the allocation
15 and certification would be limited or denied because the one
16 hundred million dollar (\$100,000,000) cap set forth in paragraph
17 (1) of subdivision (b) has been reached, the ~~Treasurer~~ *California*
18 *Educational Facilities Authority* shall offer the taxpayer the option
19 of a return of all of the contribution or the portion of the
20 contribution that would be limited, as applicable.

21 (v) Provide to the Franchise Tax Board a copy of each credit
22 certificate issued for the calendar year by March 1 of the calendar
23 year immediately following the year in which those certificates
24 are issued.

25 ~~(3) (A) The determinations of the Franchise Tax Board with~~
26 ~~respect to the disallowance of a credit, the date a return is received,~~
27 ~~and whether a return has been timely filed for purposes of this~~
28 ~~subdivision shall not be reviewed in any administrative or judicial~~
29 ~~proceeding.~~

30 ~~(B) Any disallowance of a credit claimed due to a determination~~
31 ~~under this subdivision shall be treated as a mathematical error~~
32 ~~appearing on the return. Any amount of tax resulting from such~~
33 ~~disallowance may be assessed by the Franchise Tax Board in the~~
34 ~~same manner as provided by Section 19051.~~

35 (B) (i) *The California Educational Facilities Authority shall*
36 *adopt any regulations necessary to implement this paragraph.*

37 (ii) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*
38 *Division 3 of Title 2 of the Government Code does not apply to*
39 *any regulation adopted by the California Educational Facilities*
40 *Authority pursuant to clause (i).*

1 (c) (1) In the case where the credit allowed by this section
2 exceeds the “tax,” the excess may be carried over to reduce the
3 “tax” in the following year, and succeeding five years if necessary,
4 until the credit is exhausted.

5 (2) A deduction shall not be allowed under this part for amounts
6 taken into account under this section in calculating the credit
7 allowed by this section.

8 ~~(d) (1) The Franchise Tax Board may prescribe rules,~~
9 ~~guidelines, or procedures necessary or appropriate to carry out the~~
10 ~~purposes of this section, including any guidelines regarding the~~
11 ~~limitation on total credits allowable under this section and Section~~
12 ~~17053.86.~~

13 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
14 ~~Division 3 of Title 2 of the Government Code does not apply to~~
15 ~~any standard, criterion, procedure, determination, rule, notice, or~~
16 ~~guideline established or issued by the Franchise Tax Board~~
17 ~~pursuant to this section.~~

18 (e)

19 (d) This section shall remain in effect only until December 1,
20 2016, and as of that date is repealed.

21 SEC. 3. This act shall become operative only if Senate Bill
22 1466 of the 2011–12 Regular Session is enacted and takes effect
23 on or before January 1, 2013.